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***Ex Parte* Notice**

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

As contemplated by the Wireline Competition Bureau's November 2, 2016 Public Notice in WC Docket No. 10-90,[1] and on behalf of our client, James Valley Cooperative Telephone Company (James Valley), James Valley respectfully submits this *ex parte* reflecting its views on the combination of measures that the Commission should take to address the high level of interest that rate-of-return companies, like James Valley, have shown in accepting offers of Alternative Connect America Cost Model (A-CAM) support to fund broadband deployment in rural America.

First, the Commission should commit to allocating, at the very least, the additional $50 million per year that it contemplated adding to the preliminary $150 million annual budget in the event of over-subscription to the model.[2] The high level of acceptance of model-based support by rate-of-return carriers is a signal of the strength and wisdom of the policies underlying the Commission's model-based support system. The Commission should therefore allocate the maximum amount of funds available to meet the demand for these critical policies, which are designed to further the Commission's universal service mandate and help ensure that all Americans have access to quality broadband service. Thus, the Commission should commit to allocating at least the additional $50 million per year to the annual budget to help mitigate the shortfall created by the strong demand for the Commission's model-based A-CAM support.

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1 *Wireline Competition Bureau Announces Results of Rate-of-Return Carriers that Accepted Offer of Model Support*, Public Notice, DA 16-1246 (WCB Nov. 2, 2016) (*Public Notice*).

2 *Connect America Fund* et al., WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd. 3087, 3112-13 ¶ 62 (2016) (*Rate-of-Return Reform Order*) (Noting that, in the event that demand for model-based support would exceed the budget, the "Commission at that time may consider whether circumstances warrant allocation of an additional $50 million in order to maintain the $200 per location funding cap."); *see also Public Notice* at 1 & n.3.

Second, to best promote the Commission's policy of bringing broadband to the most unserved and underserved rural areas, the Commission should first fully fund those electing carriers that have the most significant build-out obligations still ahead of them.[3] The Commission's decision to exclude model support from those who need it least is well-reasoned and helps maximize the value of the limited budget available here.[4] In light of the budget constraints, James Valley submits that the Commission should maintain that policy of allocating these scarce resources to those with "more significant work to do," and thus it proposes that the Commission should withhold model-based funding from any electing carriers that, as of their June 30, 2015 477 filing, have already met the 10/1 Mbps service level in 70% of their eligible locations.[5] The initial exclusion of carriers that already deployed 10/1 in 90% of their locations was a sensible, yet modest, first cut. In light of the high demand for model-based support, this wise principle must be extended to those carriers that have largely already met the 10/1 standard in the substantial majority of their service territory. This will free up scarce resources for those carriers that need it most. In the face of substantial budget constraints, the Commission must follow its operating principle by prioritizing those LECs that need it most over those that need it least.

Third and finally, to the extent that the two measures above do not fully mitigate the shortfall for the remaining electing carriers, James Valley respectfully submits that any shortfall must proportionately reduce the number of locations in which 10/1 deployment must be achieved.[6] Specifically, the amount of the shortfall should be divided by the $146.10 per-location-minimum (i.e., the amount provided to price cap carriers under Connect America Phase II) to identify the number of locations that the electing carrier would be excused of its buildout and service obligations.[7] The decision of which of the highest-cost locations the electing carrier

[3] *See Rate-of-Return Reform Order*, 31 FCC Rcd. at 3113, ¶ 66 ("we will not make the offer of model-based support to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state.")

[4] *Id*. (noting that excluding those LECs that had already achieved a 10/1 service level in 90% of their eligible locations "will preserve the benefits of the model for those companies that have more significant work to do to extend broadband to unserved consumers in high-cost areas, and will prevent companies from electing model-based support merely to lock in existing support amounts.").

[5] The Commission's rationale for excluding carriers that had already deployed 10/1 to 90% of their service territory is most likely true as well for those carriers that have already deployed 10/1 to 70% – the substantial majority – of their service territory. *Id*. ("Carriers that have heavily invested in recent years are likely to be receiving significant amounts of HCLS, however, and will continue to receive HCLS as well as CAF BLS, which is essentially equivalent to ICLS. Therefore, they are not prejudiced by their inability to elect the voluntary path to the model.").

[6] James Valley further submits that, in the event of any remaining shortfall, none of the per-location values should be adjusted from the final model values, as those values are independent of the budget shortfall. Rather, each remaining electing carrier's allocation will be reduced by the total shortfall percentage (again, after the model results are adjusted in accordance with the first two steps outlined above). And in no instance should a shortfall reduction reduce an individual carrier's support cap to less than $146.10 per individual location.

[7] *See id*. at ¶ 62 n.136.

would forgo deployment in should be left to the affected carriers, as they are in the best position to evaluate those locations that would be least impacted by the consequence of the underfunding.

James Valley respectfully submits that these three measures, each taken in turn, are the logical extensions of the underlying policies that the Commission adopted in the *Rate-of-Return Reform Order* needed to address the current budget constraints and achieve sustainable broadband deployment in America's communities that need it most.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

Respectfully submitted,

Joseph P. Bowser
Counsel to James Valley Cooperative Tel. Co.